



# 2016-041

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Michael F. Bolin  
Associate Justice  
Supreme Court of Alabama  
300 Dexter Avenue  
Montgomery, Alabama 36104

Judges – Salaries – Supreme Court of  
Alabama – Back Pay – Quantum Meruit –  
State Comptroller

The State Comptroller and current and former justices of the Supreme Court of Alabama should cooperate in determining payment terms on any back pay owed the justices for bench experience that accrued before May 26, 2004. The statute of limitations for back pay is two years. The Comptroller may compensate the justices under the doctrine of quantum meruit.

Dear Justice Bolin:

This opinion of the Attorney General is issued in response to your request.

### QUESTION

If current or former justices of the Supreme Court of Alabama are entitled to receive back pay, how are the justices to be compensated for that back pay?

### FACTS AND ANALYSIS

This Office understands that Justice Lyn Stuart is currently serving as Acting Chief Justice of the Supreme Court of Alabama. This Office further understands that Acting Chief Justice Stuart has recused herself from this matter and appointed Justice Michael Bolin to make this request.

On December 5, 2014, the Department of Examiners of Public Accounts released an audit of the Supreme Court of Alabama which states that one current justice and multiple former justices were owed money in light of erroneous payroll calculations dating back to 2004. Report on the Alabama Supreme Court, Department of Examiners of Public Accounts (December 5, 2014). The allegedly erroneous calculations were the result of confusion arising from a legislative amendment in 2004. Memorandum from Julia Weller, Clerk of the Supreme Court of Alabama, to Sandra Collins, State Payroll Administrator, Office of the State Comptroller, at 1-2 (May 7, 2014).

In 2004, the Legislature amended section 12-10A-1 of the Code of Alabama to add subsection (e), which states that “no circuit judge, district judge, Supreme Court Justice, or judge of the appellate courts shall have his or her salary increased for bench experience after May 26, 2004.” ALA. CODE 12-10A-1 (2012). You have pointed out that, prior to May 26, 2004, Supreme Court justices were entitled to a salary increase of 1.25 percent for each year of service on the bench. Memorandum from Julia Weller to Sandra Collins, at 1. You have explained that this 1.25 percent increase for bench experience was calculated based on the date the justice assumed office, but that the increase was implemented in the justices’ pay at the outset of the following fiscal year. *Id.*

This Office previously determined that judges and justices were entitled to receive any bench-experience salary increases accrued before May 26, 2004, but were not entitled to receive salary for bench experience after May 26, 2004. Opinion to Honorable Drayton Nabers Jr., Chief Justice, Alabama Supreme Court, dated January 31, 2005, A.G. No. 2005-058, at 3. Specifically, that opinion stated that “[t]he amendment to section 12-10A-1, effective May 26, 2004, should be interpreted to provide that any bench experience accrued *after* May 26, 2004, should not be used for purposes of increasing judicial salary, but all bench experience accrued *before* that date shall be used for salary increase purposes.” *Id.* (emphasis in original). Moreover, the *Nabers* opinion clarified that “judges assuming new judicial positions are allowed the benefit of any bench experience accrued as of May 26, 2004, to be reflected in their salaries.” *Id.* at 4.

You have additionally explained that the justices in question earned a final year of credit for bench experience in January 2004 that was inadvertently not applied to increase their salary at the beginning of the next fiscal year beginning October 1, 2004. Memorandum from Julia Weller to Sandra Collins, at 1. You have stated that, despite the *Nabers* opinion, these justices who are owed money for bench experience accrued before May 26, 2004, still have not been compensated for that back pay.

This opinion makes no specific determination as to whether back pay is owed. In addressing back pay for the sheriff, this Office emphasized that the parties should cooperate in resolving the issue. Opinions to Honorable John

Mark Tirey, Sheriff of Walker County, dated October 30, 2012, A.G. No. 2013-009; Honorable Mike Rainey, Cullman County Sheriff, dated July 2, 2013, A.G. No. 2013-058. The State Comptroller may have fiscal concerns as a result of the back pay, and the justices due back pay may have concerns about the tax consequences of receiving back pay.

The *Tirey* opinion clarified that “the statute of limitations for back pay due a public employee is now two years.” *Tirey*, at 4. Nonetheless, this Office has consistently recognized that a governmental entity may make a payment in quantum meruit despite a legal bar precluding payment. “It is the settled law of this State that where one knowingly accepts services rendered by another, and the benefit and the result thereof, the law implies a promise on the part of the one accepting with knowledge the services rendered by another to pay the reasonable value of such services rendered.” *Mantiplay v. Mantiplay*, 951 So. 2d 638, 656 (Ala. 2006), *quoting Hendrix, Mohr & Yardley, Inc. v. City of Daphne*, 359 So. 2d 792, 795 (Ala. 1978). See, e.g., the following opinions:

- Opinion to Honorable Steward L. Howard, Attorney, City of Citronelle, dated March 7, 2007, A.G. No. 2007-055 (holding that the county should pay the costs of transporting dead bodies, even though the act imposing that obligation had not been precleared by the United States Department of Justice).
- Opinion to Honorable Ronald H. Strawbridge, Attorney, Lamar County Board of Education, dated January 5, 1988, A.G. No. 88-00104 (payment under contract authorized, even though contract not formally approved).
- Opinion to Honorable Johnny H. Hart, Mayor, City of Arab, dated December 21, 1988, A.G. No. 89-00094 (finding that the City of Arab was unjustly enriched after it retained deferred compensation owed to a director of the municipal recreation department).
- Opinion to Honorable Betty T. King, Clerk, Coosa County Commission, dated September 22, 1988, A.G. No. 88-00473 (finding that a chairman of a county board of registrars, who served as the absentee election manager and as a de facto officer, was entitled to payment for her services, even though her appointment was improper).
- Opinion to Honorable Lona Gail Bradford, Town Clerk, Town of Hollywood, dated August 20, 1985, A.G. No. 85-00485 (finding that a town was obligated to pay for materials or services provided, even when they related to a project that may not have been properly competitively bid).

- Opinion to Honorable J. D. Falkner, Mayor, City of Columbiana, dated October 31, 1983, A.G. No. 84-00039 (competitive bid law violation).

This Office has specifically applied the doctrine of quantum meruit in the context of a statute of limitations. Opinion to Honorable Herman Cobb, City Attorney, City of Dothan, dated June 20, 1983, A.G. No. 83-00362. The *Cobb* opinion concluded that the City of Dothan could refund overpayments made by customers for water and sewage service, even though the limitations period for filing a claim had run.

This Office is not aware of any prohibition on the payment of back pay to a current or former justice who would have received that back pay absent the erroneous payment calculations dating back to 2004. Therefore, even if the limitations period for claims to recover unpaid compensation has expired, the State Comptroller may "recognize a moral obligation founded on a just claim of substantial pecuniary right" to pay the justice what the justice is owed. *Cobb*, at 2.

#### CONCLUSION

The State Comptroller and current and former justices of the Supreme Court of Alabama should cooperate in determining payment terms on any back pay owed the justices for bench experience that accrued before May 26, 2004. The statute of limitations for back pay is two years. The Comptroller may compensate the justices under the doctrine of quantum meruit.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Allen Mendenhall of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in dark ink, appearing to read "G. Ward Beeson, III". The signature is fluid and cursive, with the last name "Beeson" being more prominent.

G. WARD BEESON, III

Chief, Opinions Section